

THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

**ROBERT D. BELUE, et al.,**

Plaintiffs,

VS.

**A. O. SMITH ELECTRICAL  
PRODUCTS COMPANY, a division  
of A.O. SMITH CORPORATION, et  
al.,**

Defendants.

**CIVIL ACTION NO.**

2:06-cv-1034-WKW

## JURY DEMAND

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER  
JURISDICTION**

Plaintiffs Robert D. Belue, et al., by and through counsel, respectfully submits this response in opposition to Asten Johnson, Inc., Industrial Holdings Corporation f/k/a The Carborundum Company, and Ingersoll-Rand Company's [hereinafter Certain Defendants] Motion to Dismiss for Lack of Subject Matter Jurisdiction. Defendants' argument that the Court lacks diversity jurisdiction is wholly without merit and should be dismissed. Diversity jurisdiction exists today pursuant to 28 U.S.C.A. § 1332.

## ARGUMENT

On November 17, 2006, Plaintiffs filed the original complaint in this matter, seeking compensatory and punitive damages arising from Plaintiffs' exposure to asbestos-containing products manufactured, sold, supplied, distributed, installed or otherwise associated with Defendants. The complaint was filed in the United States District Court for the Middle District of Alabama, which has jurisdiction based on diversity of citizenship under 28 U.S.C.A. §1332. Plaintiffs filed a Motion for Leave of Court to File Amended Complaint on December 15, 2006, attaching the Amended Complaint as Exhibit A to the motion. The Amended Complaint adequately proffers the following jurisdictional allegations: (i) Plaintiffs are residents of Alabama, Georgia, Massachusetts, Pennsylvania, Texas, and Utah; and (ii) Defendants are corporations whose principal places of business are in states other than those listed. "In order for a federal court to assert diversity jurisdiction, diversity must be complete; the citizenship of all the plaintiffs must be different from all of the defendants." *Stafford v. Mobil Oil Corp.*, 945 F.2d 803, 804 (5<sup>th</sup> Cir. 1991). Defendant Standard Equipment Co. improperly named and served, was voluntarily dismissed from this action on December 13, 2006, that Corporation's citizenship has no effect on diversity jurisdiction. Therefore this Court has diversity

jurisdiction over this action. Once this Court has diversity jurisdiction over these claims, there is no need to inquire if a federal question appears in the Plaintiff's complaint, and there is no suggestion that any theory other than §1332 might support federal jurisdiction over this action.

In their Federal Rules of Civil Procedure Rule 12(b)(1) Motion, Certain Defendants challenged §1332 jurisdiction, claiming that there was not complete diversity of the parties. Since complete diversity only requires that no Plaintiff and Defendant are citizens of the same state, multiple Plaintiffs with citizenship in the same state do not destroy diversity jurisdiction.

#### CONCLUSION

For all the foregoing reasons, Plaintiffs' respectfully request that the Court deny Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction, as this Court properly has diversity jurisdiction over this matter pursuant to 28 U.S.C.A. §1332.

This 4<sup>th</sup> Day of January, 2007.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 4, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to all counsel of record by e-mail, and by U.S.

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**NOTICE OF DISMISSAL OF DEFENDANT**  
**STANDARD EQUIPMENT COMPANY, INC.**  
**WITHOUT PREJUDICE**

Plaintiffs, by and through their undersigned counsel, notices this Court of their dismissal of Defendant Standard Equipment Company, Inc. without prejudice in this action.

This 13<sup>th</sup> Day of December, 2006.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing is being filed electronically with the Clerk of the Court using the CM/ECF system on this 13<sup>th</sup> day of December, 2006, and will be served by electronic mail or by US Mail postage prepaid to the following:

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C. T. Corporation System  
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Morton Grove, IL 60053

Bondex International Inc.  
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Borg Warner Corporation  
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Auburn Hills, MI 48326

Buffalo Pump Inc.  
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North Tonawanda, NY 14120

Clark-Reliance Corporation  
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Cleaver Brooks  
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Milwaukee, WI 53224

Conwed Corporation  
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CT Corporation  
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